PTO/SB/17 (10-03) Approved for use through 7/31/2006. OMB 0651-0032 MAR 1 2 2004 U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. Complete if Known FEE TRANSMITTAL 09/912,755 Application Number RADEMAR July 24, 2001 Filing Date for FY 2004 First Named Inventor J. M. Milliorn Effective 10/01/2003, Patent fees are subject to annual revision. M. T. Henderson **Examiner Name** 3722 Applicant claims small entity status. See 37 CFR 1.27 Art Unit TOTAL AMOUNT OF PAYMENT 440.00 HO-P02166US0 (\$) Attorney Docket No. FEE CALCULATION (continued) METHOD OF PAYMENT (check all that apply) Credit Card 3. ADDITIONAL FEES None х Check Other Orde Deposit Account: Large Entity Small Entity Deposit 06-2375 Fee Fee Fee Description Code (\$) Code (\$) Fee Paid Number Deposit 1051 130 2051 65 Surcharge - late filing fee or oath Fulbright & Jaworski L.L.P. Name Surcharge - late provisional filing fee or cover 1052 50 2052 25 The Director is authorized to: (check all that apply) X Credit any overpayments 1053 130 1053 Charge fee(s) indicated below 130 Non-English specification 1812 2.520 1812 2,520 For filing a request for ex parte reexamination X Charge any additional fee(s) or any underpayment of fee(s) Requesting publication of SIR prior to 1804 9201 9201 1804 Examiner action Charge fee(s) indicated below, except for the filing fee Requesting publication of SIR after to the above-identified deposit account. 1805 1.840 1805 Examiner action 55.00 **FEE CALCULATION** 1251 110 2251 55 Extension for reply within first month Extension for reply within second month 1252 1. BASIC FILING FEE 420 2252 210 1253 2253 Extension for reply within third month Large Entity Small Entity 950 475 Fee Paid Fee Description Fee 1254 1,480 2254 740 Extension for reply within fourth month Code (\$) Code (\$) 1001 770 2001 385 Utility filing fee 1255 2,010 2255 1.005 Extension for reply within fifth month 1002 340 2002 170 Design filing fee 1401 330 2401 165 Notice of Appeal 1003 530 2003 265 Plant filing fee 1402 330 2402 165 Filing a brief in support of an appeal 1004 770 2004 385 Reissue filing fee 1403 290 2403 145 Request for oral hearing 1451 1.510 Petition to institute a public use proceeding 1005 160 2005 80 Provisional filing fee 1.510 1451 2452 Petition to revive - unavoidable 1452 55 110 SUBTOTAL (1) (\$) 0.00 Petition to revive - unintentional 1453 2453 665 1.330 1501 2501 Utility issue fee (or reissue) 1 330 665 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE 1502 2502 Design issue fee 480 240 Fee Paid Claims below 1503 Total Claims 0.00 640 2503 320 Plant issue fee 33 -33** Independent Petitions to the Commissioner 1460 130 1460 130 4 0.00 Claims 1807 50 1807 50 Processing fee under 37 CFR 1.17(q) Multiple Dependent 1806 180 1806 180 Submission of Information Disclosure Stmt Large Entity Small Entity Recording each patent assignment per Fee Description 8021 40 8021 40 (\$) Code (\$) property (times number of properties) Code Filing a submission after final rejection 2202 Claims in excess of 20 1202 18 9 1809 770 2809 385 (37 ČFR 1.129(a)) 1201 86 2201 43 Independent claims in excess of 3 For each additional invention to be 1810 770 2810 385 1203 290 2203 145 Multiple dependent claim, if not paid examined (37CFR 1.129(b))

**or number previously paid, it greater; For Reissues, see above		
SUBMITTED BY	(Complete	(if applicable))
Name (Print/Type) John E. Schneider Registration No. (Attorney/Agent) 31,998	Telephone	(713) 651-5462
Signature John Schuleder	Date	March 12, 2004

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Signature:

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Other fee (specify)

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Request for Continued Examination (RCE)

(Ronnie Webb)

SUBTOTAL (3) (\$)

Request for expedited examination

of a design application

385.00

440.00

Fee Transmittal l hereby certify t∱at this correśpondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. ER509329132US, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below. oune west

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Dated: March 12, 2004

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Reissue independent claims

Reissue claims in excess of 20 and over original patent

over original patent

SUBTOTAL (2) (\$)

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Application		L	_	Date	Examine		Art U
09/912,	755	July	/ 24,	2001	M. T. Hender	rson	372
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John E. Schne Attorney Reg. J	ider V	ide	<u>_</u>		Dated:	March 1	2, 2004
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Amendment Transmittal
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. ER509329132US, in an envelope addressed to: MS AF, Commissioner for Patents, P.O. Box 1450, Alexandria, V/9 22313-1450, on the date shown below. Signature: (Ronnie Webb) Dated: March 12, 2004 25393894.1



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

Received

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,755	07/24/2001	J. Michael Milliorn	P02166US0	5349
26271 7	7590 02/18/2004		EXAM	INER
FULBRIGHT	C & JAWORSKI, LLP		HENDERSOI	N, MARK T
SUITE 5100		OIPE	ART UNIT	PAPER NUMBER
HOUSTON, T	°X 77010-3095	\(\sigma_{\cdot\cdot\cdot\}	3722	
		MAR 1 2 2004	DATE MAILED: 02/18/2004	1
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Please find below and/or attached an Office communication concerning this application or proceeding.

OIPE					
	Application No.	Applicant(s)			
Advisory Action MAR 1 2 2004	09/912,755	MILLIORN, J. MICHAEL			
MAN 1 - 1	Examiner	Art Unit			
Ye.	Mark T Henderson	3722			
The MAILING DATE of this communication appe	ars on the cover sheet with the o	correspondence address			
THE REPLY FILED 04 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.					
PERIOD FOR RE	PLY [check either a) or b)]				
a) The period for reply expires <u>3</u> months from the mailing date of	-				
 b) Light The period for reply expires on: (1) the mailing date of this Adverse, will the statutory period for reply expire later the ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS 706.07(f). 	an SIX MONTHS from the mailing date o FILED WITHIN TWO MONTHS OF TH	f the final rejection. E FINAL REJECTION. See MPEP			
Extensions of time may be obtained under 37 CFR 1.136(a). The dathave been filed is the date for purposes of determining the period of extensions of the state of the shortened (b) above, if checked. Any reply received by the Office later than three more earned patent term adjustment. See 37 CFR 1.704(b).	sion and the corresponding amount of the statutory period for reply originally set in	e fee. The appropriate extension fee under the final Office action; or (2) as set forth in			
1. A Notice of Appeal was filed on Appellant's 37 CFR 1.192(a), or any extension thereof (37 CF					
2. The proposed amendment(s) will not be entered be	ecause:				
(a) they raise new issues that would require further	er consideration and/or search (see NOTE below);			
(b) they raise the issue of new matter (see Note to	pelow);				
(c) they are not deemed to place the application issues for appeal; and/or	n better form for appeal by mat	erially reducing or simplifying the			
(d) they present additional claims without cancel	ing a corresponding number of	finally rejected claims.			
NOTE:					
3. Applicant's reply has overcome the following reject	tion(s):				
4. Newly proposed or amended claim(s) would canceling the non-allowable claim(s).	be allowable if submitted in a s	eparate, timely filed amendment			
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request fo application in condition for allowance because: See		sidered but does NOT place the			
6. The affidavit or exhibit will NOT be considered becaused by the Examiner in the final rejection.	cause it is not directed SOLELY	to issues which were newly			
7. For purposes of Appeal, the proposed amendment explanation of how the new or amended claims we					
The status of the claim(s) is (or will be) as follows:					
Claim(s) allowed:					
Claim(s) objected to:					
Claim(s) rejected: <u>1-11, 13-21, 23-33</u> .					
Claim(s) withdrawn from consideration:					
8. ☐ The drawing correction filed on is a) ☐ app	roved or b) disapproved by	the Examiner.			
9. Note the attached Information Disclosure Statemen	nt(s)(PTO-1449) Paper No(s)	·			
10. Other:	SUPER	A. L. WELLINGTON VISORY PATENT EXAMINER CHNOLOGY CENTER 3700			

Continuation of 5. does NOT place the application in condition for allowance because: applicant has admitted on page 4 of the specification, Par. 0022, lines 4 and 5, that the adhesive layer is "commonly known in the art as a rubber based hot melt adhesive" such as that "sold by AVERY DENNISON under the trade name FASSON R10. Applicant further discloses that it has a "wide service temperature range of -40 degrees Celsius to 50 degrees Celsius". Since applicant has disclosed this adhesive to be "commonly used in the art", applicant has declared that this adhesive can be used as admitted prior art. Therefore, the examiners rejection has been maintained.



United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,755	07/24/2001	J. Michael Milliorn	P02166US0	5349
26271 75	90 . 12/22/2003		EXAM	INER
AR 1 2 2004 UFULBRIGHT	& JAWORSKI, LLP	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	HENDERSO	N, MARK T
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		DEC 2 9 2003	DATE MAILED: 12/22/200	3
	•	Docket: DalbGUSO		
		Client: Doydots Attorney: TKS		

Please find below and/or attached an Office communication concerning this application or proceeding.

•		-		
	MAR 1 2 2004	Application No.	Applicant(s)	
MAR 1 2 2004		09/912,755	MILLIORN, J. MICHA	ÆL
	Office Action Summary	Examiner	Art Unit	
	_	Mark T Henderson	3722	
Period fo	The MAILING DATE of this communication	appears on the cover sheet with	the correspondence addre	ss
A SHOTHE N - Exter after - If the - If NO - Failur - Any n	ORTENED STATUTORY PERIOD FOR REI MAILING DATE OF THIS COMMUNICATION sions of time may be available under the provisions of 37 CFR SIX (6) MONTHS from the mailing date of this communication. period for reply specified above is less than thirty (30) days, a period for reply is specified above, the maximum statutory perion to reply within the set or extended period for reply will, by state ply received by the Office later than three months after the med dipatent term adjustment. See 37 CFR 1.704(b).	N. 1.136(a). In no event, however, may a repreply within the statutory minimum of thirty iod will apply and will expire SIX (6) MONTI tute, cause the application to become ABA	ly be timely filed (30) days will be considered timely. IS from the mailing date of this commuNDONED (35 U.S.C. § 133).	unication.
1)⊠	Responsive to communication(s) filed on 30	September 2003.		**
2a)⊠	This action is FINAL . 2b) ☐ Tr	nis action is non-final.		
3)□	Since this application is in condition for allow closed in accordance with the practice under			erits is
Dispositi	on of Claims			
5)□ 6)⊠ 7)□	Claim(s) 1-11,13-21 and 23-33 is/are pending 4a) Of the above claim(s) is/are without claim(s) is/are allowed. Claim(s) 1-11,13-21 and 23-33 is/are rejected claim(s) is/are objected to. Claim(s) are subject to restriction and	Irawn from consideration.		
	on Papers			
10)□	The specification is objected to by the Exam The drawing(s) filed on is/are: a) a Applicant may not request that any objection to t Replacement drawing sheet(s) including the corr	nccepted or b) objected to by he drawing(s) be held in abeyand	e. See 37 CFR 1.85(a).	.121(d).
11)	The oath or declaration is objected to by the	Examiner. Note the attached	Office Action or form PTO-1	152.
Priority u	nder 35 U.S.C. §§ 119 and 120			
a)[* S 13)	Acknowledgment is made of a claim for fore All b) Some * c) None of: 1. Certified copies of the priority docume 2. Certified copies of the priority docume 3. Copies of the certified copies of the papplication from the International Burdee the attached detailed Office action for a licknowledgment is made of a claim for domence a specific reference was included in the CCFR 1.78. The translation of the foreign language is cknowledgment is made of a claim for domence control of the foreign language is cknowledgment is made of a claim for domenter of the first sentence of the control of the first sentence of the certified copies of the priority document is made of a claim for domenter the control of the certified copies of the priority document is made of a claim for domenter the certified copies of the priority documenter the priori	ents have been received. ents have been received in Apriority documents have been received in Apriority documents have been received (PCT Rule 17.2(a)). ist of the certified copies not restic priority under 35 U.S.C. § first sentence of the specificate provisional application has been estic priority under 35 U.S.C. §	plication No eceived in this National Stageceived. 119(e) (to a provisional application Daten received. 110(e) 121 since a sp	plication) a Sheet. pecific
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2) 🔲 Notice	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449) Paper No(s	5) D Notice of Info	mmary (PTO-413) Paper No(s) ormal Patent Application (PTO-152	

Art Unit: 3722

DETAILED ACTION

Faxing of Responses to Office Actions

In order to reduce pendency and avoid potential delays, TC 3700 is encouraging FAXing of responses to Office Actions directly into the Group at (703)872-9302 (Official) and (703)872-9303 (for After Finals). This practice may be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into TC 3700 will be promptly forwarded to the examiner.

1. Claims 1, 14, 17 and 29 have been amended for further examination. Claims 12 and 22 have been canceled.

Art Unit: 3722

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 2. Claims 1-11, 13-21 and 23-33 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Scott (6,420,006) in view of applicant's admittance.

Scott discloses in Fig. 2-5, an adhesive label comprising: polypropylene material; a first section (16a), a second section (24) each having a first side (20) and a second side (18), wherein the first side of the first section is contiguous with the first side of the second section, and wherein the second section forms a non-adhesive tab portion (24) extending from an edge (b) of the first section; a releasable adhesive layer (28) covering the first side (20) of the first section and configured such that the degree of adhesion is uniform such that the entire label detaches from a substrate surface (10) when the tab is pulled upon. Scott also discloses wherein the second side of the first portion is adapted to be written upon (Col. 4, lines 23-26). Scott further discloses: wherein the second section tab portion extending from the first section, wherein the second section tab portion has an edge (b) interconnected with the edge of the first section; and a label liner (38) holding a plurality of labels (Fig. 8-14), and adapted to form a roll (Fig. 15).

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However, Scott does not disclose: a label adapted to remained adhered to a substrate during exposure to various temperatures ranging between -40 degrees Celsius and 50 degrees Celsius and the entire label can be removed from the substrate after exposure to temperatures ranging from -40 degrees Celsius and 50 degree Celsius; and wherein the second side accepts printing related to food safety labeling systems; and wherein the interconnected edges form a rounded edge.

Applicant has admitted in the Specification on page 4 to the use of an adhesive which is adapted to remain adhered at temperatures ranging from -40 degrees Celsius to 50 degrees Celsius, yet is easily removable at the same temperatures.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Scott's label to include adhesive which can remain adhered at temperatures ranging at -40 degrees Celsius to 50 degrees Celsius as taught by Applicant's admittance for the purpose of providing adhesion to an item exposed to various degrees of temperatures.

In regards to Claims 7-11 and 23-33, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include any desirable indicia on the second side of the label such as food related indicia, since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack* 217 USPQ 401, (CAFC 1983).

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Also, in the present case, there appears to be no new or unobvious structural relationship between the printed matter and the substrate. Mere support by the substrate (second side surface) for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter and the substrate that is required for patentability.

In regards to Claims 9-11, 26-33 with respect to the ink color, matters related to the choice of ornamentation producing no mechanical effect or advantage considered to constitute the invention are considered obvious and do not impart patentability, *In re Seid* 73 USPQ 431.

Therefore, it would be obvious to one having ordinary skill in the art to modify the Scott reference with ink color of any desirable color, since the ink color would depend on the intended use of what the user wanted to display. Furthermore, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Therefore the label of the Scott reference can have a graphical color that is related to an industry code used in food safety systems.

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In regards to Claims 15-17, it would have been an obvious matter of design choice to make the first section, the second section, and different portions of the interconnected edges of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Therefore, it would have been obvious to modify the Scott reference to include any surface area which can be lifted by a finger for the purpose of removing the label.

Prior Art References

The prior art references listed in the attached PTO-892, but not used in a rejection of the claims, are cited for (their/its) structure. Milliorn et al discloses a similar label.

Response to Arguments

3. Applicant's arguments filed on September 30, 2003 have been fully considered but they are not persuasive.

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In response to applicant's argument that the prior art does not teach or disclose an adhesive that is adapted to adhere at temperatures ranging from -40 degree Celsius to 50 degree Celsius, the examiner submits that Applicant's admittance on page 4 of the specification to the use of an adhesive sold by AVERY DENNISON under the trade name FASSON R-10 can be used to adhere when subjected to particular temperature degrees. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Scott's label to include adhesive which can remain adhered at temperatures ranging at -40 degrees Celsius to 50 degrees Celsius as taught by Applicant's admittance for the purpose of providing adhesion to an item exposed to various degrees of temperatures.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Application/Control Number: 09/912,755

Art Unit: 3722

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

will the statutory period for reply expire later than SIX MONTHS from the date of this final

action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should

be directed to Mark T. Henderson whose telephone number is (703)305-0189. The examiner can

be reached on Monday - Friday from 7:30 AM to 3:45 PM. If attempts to reach the examiner by

telephone are unsuccessful, the examiner supervisor, A. L. Wellington, can be reached on

(703) 308-2159. The fax number for TC 3700 is (703)-872-9302. Any inquiry of a general

nature or relating to the status of this application or proceeding should be directed to the TC 3700

receptionist whose telephone number is (703)308-1148.

MTH

December 11, 2003

A L WELLINGTON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Page 8

Application/Control No. Notice of References Cited Application/Control No. O9/912,755 Applicant(s)/Patent Under Reexamination MILLIORN, J. MICHAEL Examiner Mark T Henderson 3722 Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	Α	US-2003/0039786	02-2003	Milliorn et al.	428/40.1
	В	US-			
	С	US-			
	D	US-			
	E	US-			
	F	US-			
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FOREIGN PATENT DOCUMENTS

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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).) Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.